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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/613,241	07/03/2003	Curtis Brian Williamson	5635	4754

7590

08/24/2005

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EXAMINER

JUSKA, CHERYL ANN

ART UNIT

PAPER NUMBER

1771

DATE MAILED: 08/24/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/613,241

Applicant(s)

WILLIAMSON ET AL.

Examiner

Cheryl Juska

Art Unit

1771

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 15 July 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-33 is/are pending in the application.
- 4a) Of the above claim(s) 23-33 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-22 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 03 July 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 10/03.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### *Election/Restrictions*

1. Applicant's election with traverse of Group I, claims 1-22 in the reply filed on July 15, 2005, is acknowledged. The traversal is on the ground(s) that the subject matter of the two groups are sufficiently related so as not to present a burden to the examiner. This is not found persuasive because the search required for the method claims is not required for the product claims. Although the product claims include limitations to the time and temperature of the drawing step (i.e., method limitations), said method limitations are not necessarily requirements of the product claim search. As such, searching the method claims along with the product claims would require a burdensome search.
2. The requirement is still deemed proper and is therefore made FINAL. Claims 23-33 are hereby withdrawn as non-elected.

### *Claim Rejections - 35 USC § 103*

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over US 4,897,989 issued to Gray.

Gray discloses a pile fabric comprising a three-ply pile yarn including two non-textured

Art Unit: 1771

yarns (abstract). Said pile yarns are tufted into a base fabric (col. 2, lines 29-37). The preferred yarn is polyester (i.e., Dacron) (col. 1, lines 36-44). Although Gray fails to explicitly teach the fabric gauge and average void area, Figures 7 and 8 clearly show a significant reduction in average void area between tuft rows compared to the prior art pile fabrics of Figures 5 and 6 (col. 2, line 61 - col. 3, line 8). Since the principle of reduced void area is disclosed by Gray, the specific amounts of void area corresponding to the specified fabric gauge is readily obvious to one of ordinary skill in the art. It has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. *In re Aller*, 105 USPQ 233. Thus, claims 1, 5, 6, 11, and 12 are rejected as being obvious over the Gray invention.

With respect to claims 2-4, Gray does not disclose the cross-sectional geometry or aspect ratio of the polyester filaments. However, circular and shaped cross-sections are common in the art of pile fabrics. Applicant is hereby given Official Notice of this fact. Additionally, the advantages and relationships of various cross-sectional shapes and aspect ratios are well established and predictable in the art. As such, selection of a particular filament cross-sectional shape and aspect ratio is readily obvious over the prior art. The examiner notes that the facts asserted to be common and well-known are capable of instant and unquestionable demonstration as being well-known. To adequately traverse such a finding, applicant must specifically point out the supposed errors in the examiner's action, which would include stating why the noticed fact is not considered to be common knowledge or well-known in the art. Furthermore, optimization of a result effective variable and changing the shape of an article is held to be within the level of ordinary skill in the art. Therefore, claims 2-4 are also rejected.

Art Unit: 1771

With respect to claim 13, Gray fails to explicitly teach the polyester yarn is a partially oriented yarn (POY). However, the Type 56T Dacron polyester employed by Gray is known to be partially oriented polyester yarn. Note US 5,858,885 issued to Hamilton et al., col. 9, lines 19-23. Hence, claim 13 is also rejected.

Regarding claims 7-10 and 14-22, it is argued that said claims are also obvious over the cited Gray reference. While said claims limit various process steps in the manufacture of the fiber, said process steps are not given patentable weight at this time. It is the examiner's position that the fibers of Gray are identical or only slightly different than the presently claimed fibers and fabric prepared by the method presently claimed. Even though product-by-process claims are limited by and defined by the process, determination of patentability is based on the product itself. The patentability of a product does not depend on its method of production. If the product in the product-by-process claim is the same as or an obvious variant from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process. *In re Thorpe*, 227 USPQ 964. The burden has been shifted to the Applicant to show unobvious differences between the claimed product and the prior art product. *In re Marosi*, 218 USPQ 289. Therefore, claims 7-10 and 14-22 are rejected.

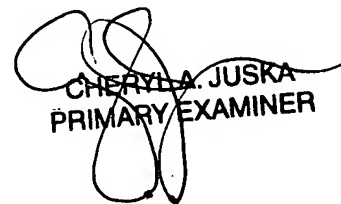
### ***Conclusion***

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Cheryl Juska whose telephone number is 571-272-1477. The examiner can normally be reached on Monday-Friday 10am-6pm. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached

Art Unit: 1771

at 571-272-1478. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

6. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
CHERYL A. JUSKA  
PRIMARY EXAMINER

cj  
August 16, 2005